instituted after three years from the commission of the offence", apply to proceedings by way of indictment against the bankrupt in respect of an alleged offence by her under par. (*g*) of s. 209 of the *Bankruptcy Act*.

Section 219 (1) refers to penalties which may be imposed in the case of proceedings upon indictment in respect of offences in relation to which no special penalty is imposed by the Act. Sub-section (2), as to which the question now arises, is in the following terms :— " (2) Summary proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the official receiver or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence". Then sub-s. (3) of s. 219 relates to indictments.

The words " summary proceedings in respect of any such offence " have been interpreted by this Court in the case of *Re Hodgkinson* (1) as relating to any offence against the Act and as not limited to offences against the Act in respect of which no special penalty is imposed. Therefore sub-s. (2) applies to summary proceedings in respect of any offence against the Act.

The first part of the section says that summary proceedings shall not be instituted after one year from the first discovery thereof either by the Official Receiver or by the Trustee in the bankruptcy. The second part of the section refers to proceedings by a creditor, and provides that in that case summary proceedings shall not be instituted by the creditor after one year from the first discovery thereof.

Then the final words of the section are " nor in any case shall they be instituted after three years from the commission of the offence".

Therefore the section provides, certainly in respect of summary proceedings, what may be called a double period of limitation, the specification of the first period (one year) depending upon the date of discovery of an offence and the second period of limitation (three years), operating concurrently, depending upon the date of the commission of an offence.

The question which arises here is whether the word " they " in the final words of the sub-section relates to all proceedings or only to summary proceedings. In my opinion it is clear that the word " they " relates to the summary proceedings mentioned in the initial words of the section. The sub-section is dealing throughout

(1) (1947) 75 C.L.R. 276.

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with summary proceedings, first in respect of certain cases, then finally " in any case ", that is in all cases, and when the sub-section is thus construed as containing particular provisions for some cases in the first part and then as dealing with all cases in the final part it is, in my opinion, plain that the word " they " refers to the summary proceedings which are the subject matter of the whole provision.

Therefore, in my opinion, the question submitted should be answered " No", and the costs should be paid out of the bankrupt's estate.

WILLIAMS J. I agree that the word " they " in s. 219 (2) refers to summary proceedings for offences against the Act and not to indictable offences as it is only with summary proceedings that the sub-section is dealing.

I agree that the question should be answered in the negative.

FULLAGAR J. I agree that the only possible view is that the word " they " must be read as referring to summary proceedings, since they are the only kind of proceedings mentioned, and as referring to no other proceedings.

Question answered : " No." Costs of both the Official Receiver and the bankrupt to be paid out of the bankrupt's estate.

Solicitor for the Official Receiver, *K. C. Waugh*, Crown Solicitor for the Commonwealth.

Solicitor for the bankrupt, *H. A. Krakowski.*

E. F. H.

[HIGH COURT OF AUSTRALIA.]

DEVER . . . . . APPELLANT;
DEFENDANT,

AND

LAWSON . . . . . RESPONDENT.
CLAIMANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1950.

SYDNEY, *Dec.* 20, 21.

McTiernan, Webb and Kitto JJ.

Agriculture—Agricultural holding—Lease—Statutory provision for twelve months' notice to quit—Share-farming agreement—Terminable on one month's notice—Notice to quit in terms of agreement—Validity—Agricultural Holdings Act 1941 (*N.S.W.*) (*No.* 55 *of* 1941), *s.* 24 (1) (2).

Section 24 (1) of the *Agricultural Holdings Act* 1941 (N.S.W.) provides that a notice to quit shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy or, where the date of creation of a tenancy is unknown to the person giving the notice, before the expiration of twelve months from the date of the notice. Section 24 (2) (*b*) of the Act provides that that section shall not apply to any notice given by a tenant to a sub-tenant.

Section 5 (1) provides that the Act shall apply to share-farming agreements and the parties to any such agreement in like manner as it applies to contracts of tenancy and the parties to any such contract; and s. 5 (3) provides that in the application of the Act to a share-farming agreement and the parties thereto a reference to a tenancy shall be construed as a reference to the use and occupation of land by a share-farmer, a reference to a landlord shall be construed as a reference to an owner who is a party to a share-farming agreement, and a reference to a tenant shall be construed as a reference to a share-farmer.

Held, that s. 24 (2) (*b*) of the Act applies where a share-farmer holds property under a share-farming agreement from a person who is a tenant of an owner in fee, the farmer being a sub-tenant within that sub-section and, consequently, there is not any obligation to give him the notice referred to in s. 24 (1) of

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the Act, and a notice to quit properly given under the terms of the agreement is efficacious to terminate the contract.

Decision of the Supreme Court of New South Wales (Full Court): *Lawson* v. *Dever* (1950) 50 S.R. (N.S.W.) 313; 67 W.N. 200, affirmed.

APPEAL from the Supreme Court of New South Wales.

A summons in ejectment was issued out of the Supreme Court of New South Wales by Jessica Alicia Lawson, the wife of John Norman Lawson, of Jerry's Plains, in which she claimed from Francis Gordon Dever the possession of a dairy farm situate at Jerry's Plains described in a memorandum of agreement made between her and Dever on 15th January 1948.

In her particulars of claim it was alleged that, on or before 1st December 1945, her husband leased the dairy farm to her and she was at all material times and still was the lessee of her husband in respect of the dairy farm. On 15th January 1948, Mrs. Lawson entered into a written share-farming agreement with Dever and in pursuance of that agreement he went into possession of the dairy farm. The agreement covered the occupation of the dairy farm, and, in its principal terms, followed the ordinary form of a share-farming agreement applicable to a dairy farm. Clause 14 of the agreement provided that it should be deemed to have commenced on 15th January 1948 and "shall continue in force until terminated by one month's notice in writing given by either of the parties hereto to the other of them Provided that the Owner" (Mrs. Lawson) "may terminate the Agreement by a peremptory notice for any misconduct by the Farmer" (Dever) "or breach or non-fulfilment by him of any of these conditions or of his wilful disobedience of the orders of the Owner and upon receipt of such peremptory notice the Farmer shall immediately vacate the premises and deliver the same to the Owner together with everything thereon belonging to the Owner and shall not be entitled to any payment except his share in the proceeds of sale of any produce sold prior to such termination."

On 6th August 1949, a notice to quit was given by Mrs. Lawson to Dever requiring him to quit and deliver up possession of the dairy farm on 8th September 1949. It was not disputed that the notice was served in sufficient time to enable the period of one month provided by clause 14 of the agreement to elapse before 8th September 1949. The notice described specifically the land which was sought to be recovered and added grounds that Dever had failed to cultivate the dairy farm according to the rules of good husbandry, and gave other reasons why he should be required

to deliver up possession. At the expiration of the period of one month Dever declined to quit and deliver up possession of the dairy farm.

An Agricultural Committee appointed under the Act, upon the application of Mrs. Lawson, after hearing witnesses and considering other evidence in the matter, found, on 12th January, 1950, that Dever was not, as at 6th August 1949, nor at the date of its award, cultivating the holding according to the rules of good husbandry.

Upon Dever filing particulars of defence, in which he raised various answers to Mrs. Lawson's claim for possession, a summons was taken out under rule 504 of the Supreme Court Rules by Mrs. Lawson for an order striking out Dever's appearance and defence and giving Mrs. Lawson leave to enter judgment in the action.

The application was refused by *Dwyer* J. but the Full Court of the Supreme Court allowed an appeal, struck out the appearance and gave leave to Mrs. Lawson to enter judgment (*Lawson* v. *Dever* (1)).

From that decision Dever appealed to the High Court.

The relevant statutory provisions are sufficiently set forth in the judgment hereunder.

G. Wallace K.C. (with him *J. K. Emerton*), for the appellant. The issue is whether a person who enters into a share-farming agreement with a lessee of a " holding " is entitled to the same benefits as those to which he would have been entitled under the *Agricultural Holdings Act* 1941 (N.S.W.) if the agreement had been made with the owner. The Full Court of the Supreme Court was unduly impressed by the provisions of s. 24 (2) (b) of the Act, which provide that when a notice to quit is given by a tenant to a sub-tenant the latter is not entitled to the benign provisions of s. 24 (1). The Court, however, should be concerned with construction, not with consequences, because the provisions of s. 5 (3) are mandatory and free from ambiguity. In any event the legislature might well have deemed a share-farmer who made an agreement with a lessee to be on a different footing from an ordinary sub-lessee because he was under a positive duty to provide labour for the working of the land either with or without materials or stock and, doubtless, made commitments accordingly. The definition of " owner " in s. 5 (2) includes a lessee, for the latter is obviously entitled to the rents and profits for the time being. That being so, the appellant completely satisfies the requirements

(1) (1950) 50 S.R. (N.S.W.) 313 ; 67 W.N. 200.

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of the definition of " share-farmer " and has in every sense entered into a " share-farming agreement", with the result that by the further application of s. 5 (3) he is automatically entitled to the benefits of s. 24 (1). It is not to the point that sub-lessees are excluded from such benefits. Section 5 (3) is mandatory and not facultative in its terms throughout. It is not governed by the opening words of sub-s. (1) of s. 5, and even if it were, the word " expressly " appearing therein would safeguard the position of the appellant. By s. 5 (3) (d) the Court is bound to construe the phrase " contract of tenancy " appearing in s. 24 (1) as a " share-farming agreement " and, by s. 5 (3) (b), the word " tenancy " as " use and occupation by a share-farmer ". That should conclude the matter. The Court has not any discretion in the matter of construction. Sub-section (2) (b) of s. 24 was taken from s. 25 (2) (d) of the English *Agricultural Holdings Act* 1923, but the State draftsman overlooked the fact that there was not any reference made in the English Act to share-farming agreements. If s. 5 (3) (d) were applied to s. 24 (2) (b) the result would be " any notice given by a share-farmer to a sub-share farmer ". The facts of this case are not embraced in such a phrase. But whatever construction be given to s. 24 (2) (b) a result cannot be achieved whereby the appellant could properly be described as a " sub-tenant " within the meaning of the Act. The sub-section is not, therefore, any bar, and the Court ought to construe s. 24 (1) in the manner prescribed by s. 5 (3).

M. F. Hardie K.C. (with him *D. F. Lewis*), for the respondent. Section 24 (1) of the *Agricultural Holdings Act* 1941, has not any application to the share-farming agreement under consideration as the notice terminating the agreement was a notice " given by a tenant to a sub-tenant " within the meaning of s. 24 (2) (b). The appellant was a notional tenant for the purposes of the Act; otherwise he could not claim the benefit of sub-s. (1) of s. 24. Accordingly, he was the tenant of the respondent for the purposes of sub-s. (2). The respondent herself was a tenant, and, accordingly, the appellant was her sub-tenant. The appellant sought to take the matter outside s. 24 (2) (b) by contending that the respondent was not a tenant within the meaning of that sub-section and relied upon s. 5 (3) (d) and upon the provisions of sub-s. (2) of that section, under which the respondent is referred to for the purposes of that section only as the " owner ". Neither of those provisions are in any way relevant or material in determining whether the respondent was a tenant within the meaning of

s. 24 (2) (b). Whether she was or was not a tenant depended upon the actual facts, and was not in any way affected by the provisions of s. 5. The allegation in the particulars of claim that she was lessee of the property has not been disputed and that established that she was a tenant for the purposes of s. 24 (2) (b).

G. Wallace K.C., in reply.

McTIERNAN J. The appeal will be dismissed with costs. Written reasons will be furnished later.

THE COURT delivered the following written judgment :— Dec. 21.

The respondent sued the appellant in an action of ejectment in the Supreme Court of New South Wales to recover possession of a dairy farm. The appellant was in possession of the farm under a share-farming agreement into which he had entered with the respondent and which provided that it should continue in force until termination by one month's notice in writing given by either of the parties to the other. The respondent gave to the appellant a notice in writing to quit and deliver up possession of the farm on a date which was more than one month after the giving of the notice ; and as the appellant continued in possession after that date the respondent brought the action.

Particulars of claim were delivered with the writ, and they alleged that the share-farming agreement was duly determined by the notice already mentioned. The appellant filed particulars of defence in which he denied the due determination of the agreement, setting up several grounds of which the only one relied upon in this appeal was that the provisions of s. 24 (1) of the *Agricultural Holdings Act*, 1941 (N.S.W.) had not been complied with. The respondent in her particulars in reply asserted that those provisions were not applicable. A summons to strike out the appearance and to empower the respondent to enter judgment in the action was dismissed in chambers, but the Full Court of the Supreme Court allowed an appeal, struck out the appearance and gave the respondent leave to enter judgment. From this decision the appellant appealed to this Court.

Section 4 of the *Agricultural Holdings Act*, 1941, defines " holding " in terms which apply to the dairy farm in question. It also defines " contract of tenancy " as meaning a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year, and as including a letting of land under a tenancy at will ; and it defines " tenant " as meaning the holder of land under a contract of tenancy.

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Section 24 (1), so far as material, provides that: "Notwithstanding any provision in a contract of tenancy or in any other Act to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy or where the date of creation of a tenancy is unknown to the person giving the notice, before the expiration of twelve months from the date of the notice". Section 24 (2) provides that: "This section shall not apply to . . . (b) any notice given by a tenant to a sub-tenant . . . ".

Section 24 does not apply in terms to the case of a share-farming agreement which is so framed as not to confer upon the share-farmer a right to exclusive possession of the land. Such an agreement confers only an irrevocable licence and does not create a tenancy: *Bellinger* v. *Hughes* (1); see also *Hindmarsh* v. *Quinn* (2). But the appellant relies upon s. 5 of the Act as making the provisions of s. 24 (1) applicable to this case, while at the same time he denies that the same section makes s. 24 (2) (b) applicable.

Section 5 (1) provides that the Act shall (except where otherwise expressly provided) apply to and in respect of share-farming agreements and the parties to any such agreement in like manner as it applies to contracts of tenancy and the parties to any such contract. Section 5 (2) defines "share-farming agreement", and provides that a person for the time being entitled to the rents and profits of any land is referred to in the section as the "owner", and that the other party to a share-farming agreement is referred to in the section as the "share-farmer". Section 5 (3) provides that: "In the application of this Act to and in respect of a share-farming agreement and the parties thereto—(a) a reference to a contract of tenancy shall be construed as a reference to a share-farming agreement; (b) a reference to a tenancy shall be construed as a reference to the use and occupation of land by a share-farmer; (c) a reference to a landlord shall be construed as a reference to an owner who is a party to a share-farming agreement; (d) a reference to a tenant shall be construed as a reference to a share-farmer; (e) a reference to a holding shall be construed as a reference to land which a share-farmer is authorised to use and occupy pursuant to a share-farming agreement".

The appeal was argued on the footing that the share-farming agreement made between the parties was a share-farming agreement within the meaning of s. 5, and it follows that, if s. 24 (2) (b) has

(1) (1911) 11 S.R. (N.S.W.) 419; 28 W.N. 88.

(2) (1914) 17 C.L.R. 622.